

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
THE CITY OF PORTSMOUTH
LAKE KILBY WATER TREATMENT FACILITY
Permit No. VA0006301**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a), between the State Water Control Board and the City of Portsmouth, for resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Portsmouth” means the City of Portsmouth.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Regulations” means 9 VAC 25-31-10 *et seq.* – Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

9. "Permit" means VPDES Permit No. VA0006301.

SECTION C: Findings of Fact and Conclusions of Law

1. Portsmouth owns and operates the Lake Kilby Water Treatment Facility located at 105 Maury Place in Suffolk, Virginia. This facility is the subject of the Permit which became effective on May 20, 2000 and expires on May 20, 2005. The Permit is an individual VPDES permit for discharges from the settling lagoon into an unnamed tributary to Savage Pond and Pitchkettle Creek in the James River drainage.
2. §62.1-44.5, A (1) of the Code, §9 VAC 25-151-50 of the Regulations, and Part II, F of the Permit prohibit discharges to State waters except in accordance with the Permit. Part I of the Permit contains effluent limitations for total suspended solids (TSS) with which Portsmouth is required to be in compliance.
3. On September 16, 1999, Hurricane Floyd inundated and significantly damaged the Lake Kilby Water Treatment Plant. The earthen embankment of the residuals lagoon was supersaturated by the floodwaters and the exterior slope of the embankment subsided in five places weakening the entire 2,000 foot embankment. The following day, the operators lowered the level of the lagoon to prevent a catastrophic failure and notified DEQ of their actions. The lower lagoon level was maintained until the repair work was completed to prevent a failure of the embankment. The lower lagoon level did not allow sufficient water depth for settling of the solids and the facility was not able to meet their TSS limits.
4. In November, 1999, DEQ notified Portsmouth that since the Hurricane was an act of God, they would not be responsible for meeting their TSS limit until the repairs were completed. In February, 2000, Portsmouth advised DEQ that repairs would start in May, 2000 and be completed in October, 2000.
5. In May, 2000, the City of Suffolk required that a site plan be submitted for the repair work in accordance with their newly adopted Unified Development Ordinance. The site plan was not approved by the City of Suffolk until December, 2000, resulting in delays in the construction.
6. The repair work was determined to impact 1.14 acres of wetlands and coverage under a Nationwide Permit No. 3 had to be obtained from the Army Corps of Engineers before the work could proceed. This coverage was granted in October, 2000.
7. In October, 2000, DEQ notified the City that adequate time for the repairs had elapsed and DEQ would take enforcement action if the facility did not comply with their permit effluent limitations.
8. The facility exceeded its TSS effluent limitations in February, March and April of 2001. In May, the repair work was sufficiently completed to allow Portsmouth to raise the lagoon level and thereby comply with the TSS effluent limitations. The last of the lagoon repair work was completed in July, 2001.
9. DEQ inspections revealed that residuals discharged from the lagoon impacted down-stream Lake Savage which has become partially filled in. Notice of

Violation No. 01-12-TRO-004 was issued to Portsmouth on December 17, 2001 in regard to the filling of Lake Savage.

10. Portsmouth opened bids for the restoration of Lake Savage on May 7, 2002 and anticipates issuing a Notice to Proceed by July 1, 2002.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a), orders Portsmouth, and Portsmouth agrees, to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Portsmouth, for good cause shown by Portsmouth, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Portsmouth by DEQ on December 17, 2001. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Portsmouth admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Portsmouth consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Portsmouth declares it has received fair and due process under the Administrative Process Act, Va. Code §2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Portsmouth to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Portsmouth shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Portsmouth shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Portsmouth shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Portsmouth. Notwithstanding the foregoing, Portsmouth agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Portsmouth. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Portsmouth from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Portsmouth voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

Portsmouth voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City of Portsmouth

The foregoing document was signed and acknowledged before me this ____ day of

_____, 2002, by _____, who is

C.W. McCoy

Interim City Manager of Portsmouth, on behalf of the City of Portsmouth.

Notary Public

My commission expires: _____.

APPENDIX A

Portsmouth shall:

1. Mail all submittals and reports required by this Appendix A to:
Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462
2. Comply with all conditions of the Permit.
3. By June 1, 2002, submit a restoration plan for dredging Lake Savage and a joint permit application (JPA) for conducting the dredging. Comply with the plan and the Virginia Water Protection Regulations.
4. By July 1, 2002 submit a draft long term residuals management plan for the Lake Kilby water treatment plant lagoon.
5. Within 90 days following the completion of the Lake Savage restoration plan (#3 above), submit a final long term residuals management plan. Implement the plan upon its approval by DEQ.